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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,783	04/02/2004	Nicolaas Van Der Plas	03910/0201067-US0	9960
7278	7590	05/21/2007		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER COOLEY, CHARLES E	
			ART UNIT 1723	PAPER NUMBER
			MAIL DATE 05/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/816,783

Applicant(s)

VAN DER PLAS, NICOLAAS

Examiner

Charles E. Cooley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 April 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,4-9,14 and 21-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-31 is/are allowed.
- 6) ☒ Claim(s) 2,6-9,14,21 and 30-32 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **NON-FINAL OFFICE ACTION AFTER RCE**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 APR 2007 has been entered.

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. § 119, which papers have been placed of record in the file.

### ***Specification***

3. The abstract is acceptable.
4. The title is acceptable.
5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 C.F.R. § 1.75(d)(1) and M.P.E.P. § 608.01(I).

Correction of the following is required:

- a. The subject matter of new claim 28 lacks antecedent basis in the specification but is reasonably shown by at least Figures 5 and 7.

### **608.01(o) [R-2] Basis for Claim Terminology in Description**

The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import; and in mechanical cases, it should be identified in the descriptive portion of the specification by reference to the drawing, designating the part or parts therein to which the term applies. A term used in the claims may be given a special meaning in the description. No term may be given a meaning repugnant to the usual meaning of the term.

Usually the terminology of the original claims follows the nomenclature of the specification, but sometimes in amending the claims or in adding new claims, new terms are introduced that do not appear in the specification. The use of a confusing variety of terms for the same thing should not be permitted.

New claims and amendments to the claims already in the application should be scrutinized not only for new matter but also for new terminology. While an applicant is not limited to the nomenclature used in the application as filed, he or she should make appropriate amendment of the specification whenever this nomenclature is departed from by amendment of the claims so as to have clear support or antecedent basis in the specification for the new terms appearing in the claims. This is necessary in order to insure certainty in construing the claims in the light of the specification, *Ex parte Kotler*, 1901 C.D. 62, 95 O.G. 2684 (Comm'r Pat. 1901). See 37 CFR 1.75, MPEP § 608.01(i) and § 1302.01. >Note that examiners should ensure that the terms and phrases used in claims presented late in prosecution of the application (including claims amended via an examiner's amendment) find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description, see 37 CFR 1.75(d)(1). If the examiner determines that the claims presented late in prosecution do not comply with 37 CFR 1.75(d)(1), applicant will be required to make appropriate amendment to the description to provide clear support or antecedent basis for the terms appearing in the claims provided no new matter is introduced.<

### ***Claim Objections***

6. Claim 27 is objected to because of the following informalities:
  - a. Claim 27 depends from itself.Appropriate correction is required.

### ***Claim Rejections - 35 U.S.C. § 112, second paragraph***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 14 and 30-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14: does "a flight" have any relationship to the flight recited in claim 21?

Claim 30: does "a trailing edge of the guide plate" have any relationship to the trailing edge of the guide plate recited in claim 22? This claim also repeats much of the subject matter from claim 22.

Claim 31: does "a trailing edge of the guide plate" have any relationship to the trailing edge of the guide plate recited in claim 22?

Claim 32: does "a flight" have any relationship to the flight recited in claim 22?

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**10. Claims 2, 6, 7, 8, 9, 14, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Chupka (US 4,725,007).**

The patent to Chupka discloses a screw agitating device having a chamber 12, 16 having a bottom 14 with a discharge opening (within 18); a screw (28B - the Figure 5 embodiment) in the chamber that is driven about a vertical rotational axis, the screw including at least one generally helical flight (50B or 52B) including a leading edge at 46B adjacent the bottom (when the screw is rotated in a clockwise sense); the flight (50B or 52B) being dimensioned to have its greatest distance to the rotational axis at the edge 46B; the screw 28B tapering upwardly as seen in Figure 5; a rotary driven device 34A in the lower section of the screw near the discharge opening of the chamber bottom 14; said rotary driven device 34A comprising at least two guide plates (36B) equally spaced around said vertical rotational axis; each said guide plate including side edges wherein a selected edge can be construed as a trailing edge (e.g., the edge 68 when the screw is rotated in a clockwise sense) and the edge opposite the trailing edge being the leading edge when the screw is rotated in a clockwise sense, an upwardly facing deposition surface (the surface defined between the trailing edge 68 and the leading edge), and a radially outer boundary with a circumferential length and a distance to said rotational axis; the trailing edge 68 of one of the guide plates is fixedly attached to the leading edge 46B of the flight as seen in Figure 5; wherein the distance of the boundary of each deposition surface to the rotational axis is essentially equal along its circumferential length in rotating direction, and is greater than the greatest distance of the flight to the rotational axis (Figure 5); the guide plates occupying the

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recited angular range as seen in Fig. 5; the leading edge of said guide plate comprises a radially outer section and a radially inner section, said radially outer section is arranged trailing compared to its said radially inner section in the direction of rotation (seen in the rightmost guide plate 36B in Fig. 5); wherein said take-up edge runs substantially tangential to said rotational axis (seen in the rightmost guide plate 36B in Fig. 5); wherein said deposition surface runs at a downward pitch angle relative to said vertical rotational axis (seen in the bottommost and rightmost guide plates 36B in Fig. 5); the guide plates (36B) having flat and downwardly angled surfaces or walls as seen in Figure 5; the screw (28B) having the helical flight (50B or 52B) with windings that narrow from the bottom to the top of the screw.

#### ***Allowable Subject Matter***

11. Claims 30-32 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.
12. Claims 4-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
13. Claims 22-31 are allowable over the prior art of record.

#### ***Response to Amendment***

14. Applicant's arguments filed 16 APR 2007 have been fully considered but they are not deemed to be persuasive.

Applicant is reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Turning to the rejection of the claims under 35 U.S.C. § 102(b), it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)). Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of properties that are inherently possessed by the prior art reference. *Verdegaal Brothers*



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*Inc. v. Union Oil co. of California*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

With respect to the applied prior art under 35 U.S.C. § 102(b), the examiner has explicitly demonstrated how the Chupka reference discloses each and every element set forth in the claims and how the pending claims read on the disclosure of the reference, hence the rejection is considered proper.

Applicant argues that "[c]laim 21 distinguishes over Chupka by being directed to a feed mixer, by a mixing screw having its leading edge arranged adjacent to the bottom

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of the mixing chamber, and by having the trailing edge of one of the guide plates fixedly attached to the leading edge of the flight.”

Regarding the “feed mixer” remark, such an intended use has not been afforded any patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647; *In re Sebald*, 122 USPQ 527; *In re Lemin et al.*, 140 USPQ 273; *In re Sinex*, 135 USPQ 302; *In re Pearson*, 181 USPQ 641. The screw in Chupka has its leading edge arranged adjacent to the bottom of the mixing chamber as seen in Figures 3 and 5. Furthermore, the trailing edge 68 of one of the guide plates 36B is fixedly attached to the leading edge 46B of the flight as seen in Figure 5.

It is therefore not seen how new claim 21 defines over Chupka. The leading edge vs. trailing edge issue was discussed in the advisory action and the claims are not drafted to preclude the same interpretation. Edge 46B is certainly a leading edge of the flight member when the screw of Chupka is rotated in clockwise sense which is well within the realm of possibilities. The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain.” *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary

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skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998). Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). Accordingly, the edge interpreted as the leading edge 46B of the flight is shown attached to a portion of the trailing edge 68 of guide plate 36B as seen in Figure 5. Thus, when giving the terminology in the claims its broadest reasonable interpretation, claim 21 and several of the claims depending therefrom succumb to the teachings and suggestions of Chupka.

### **Conclusion**

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Charles", followed by a long, horizontal, wavy line that extends to the right.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

17 May 2007